

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 14, 2006 ("Office Action"). In the Office Action, Claims 1-37 are pending and the Examiner rejects Claims 1-37. Claims 1, 7, 10, 15, 18, 22, 26, 30, 32, 35, and 37 have been amended. Claim 4 has been cancelled. Applicants respectfully request reconsideration and favorable action in this case.

Section 103 Rejections

The Office Action rejects Claims 1-8, 10-16, 32-33, and 35-36 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,799,273 issued to Mitchell et al. ("*Mitchell*") in view of U.S. Patent Application Publication No. 2005/0038657 issued to Roth et al. ("*Roth*"). The Office Action also rejects Claims 9, 17-31, 34, and 37 under 35 U.S.C. § 103(a) as being unpatentable over *Mitchell* in view of U.S. Patent No. 6,068,487 issued to Dionne ("*Dionne*") and further in view of U.S. Patent No. 6,424,357 issued to Frulla et al. ("*Frulla*"). Applicants respectfully traverse these rejections for the reasons described below.

As a threshold matter, Applicants note that *Roth* has an actual filing date after the filing date of the present application. Applicants further note that *Roth* is a continuation-in-part of U.S. Patent Application Serial No. 10/227,653, which also has an actual filing date after the filing date of the present application. Therefore, neither *Roth* nor the '653 application may be used to reject the claims under 102(e) or 102(e)/103 unless there is "proper support for the subject matter as required by 35 U.S.C. 119(e) or 120," (see M.P.E.P. § 706.02, Example 2, for example,) in a priority document with a filing date earlier than the present application (and subject to any possible swear behind). In the present case, the '653 application claims priority to 13 provisional applications. However, no indication was given in the Office Action as to which of the 13 provisional applications provide "proper support for the subject matter" in *Roth* used in rejecting the claims. Accordingly, Applicants respectfully request that the Examiner identify the proper support for the subject matter relied upon. If there is no such support, the Office Action rejects the claims based solely on material filed in the PTO after the filing date of Applicants' application, which is improper. Reconsideration and favorable action is requested.

Claim 35

Claim 35 is allowable at least because *Mitchell* does not teach or suggest “. . . storing information relating the audio file to the corresponding textual word, the information comprising an **electronic marker within the audio file** . . .” (emphasis added) as recited in Claim 35. The Office Action cites Column 9, lines 13-25 and the Abstract of *Mitchell* in rejecting this claim, but these portions describing link data 25 of *Mitchell* do not disclose the claimed electronic marker within the audio file. Rather, link data 25 is merely a table, separate from the audio file and thus not “within the audio file” as claimed. *See Mitchell*, column 7, lines 13-16. The cited portion of *Mitchell* merely shows link data 25 is capable of storing audio start points and audio end points to facilitate the retrieval and playback of a certain audio segment. *See Mitchell*, Figure 3, Figure 4, and column 6, lines 55-59. However, link data 25 is stored in volatile memory, and *Mitchell* makes it clear that it is impractical to store the audio file in volatile memory. *See Mitchell*, column 6, lines 30-34. Thus, even assuming for the sake of argument that link data 25 is an electronic marker, which Applicants entertain for argument's sake only, *Mitchell* does not teach or suggest storing an **electronic marker within the audio file**. For at least this reason, Claim 35 is allowable as are all the claims depending therefrom. In addition, Claim 1, as amended, is allowable for analogous reasons, as are the claims depending therefrom. Favorable action is requested.

Claim 1

Claim 1, as amended, is allowable also at least because *Mitchell* does not teach or suggest “converting the plurality of textual words to a plurality of audible words” as recited in amended Claim 1. The Office Action cites Column 6, lines 9-19 of *Mitchell* in rejecting this claim. The Office Action is incorrect. Rather, *Mitchell* is limited to a speech recognition engine that is used in data processing. *See Mitchell*, column 1, lines 8-10. The principle and purpose of the speech recognition engine disclosed in *Mitchell* is to allow “**audio data to be played back** for any output data which has been dictated even if the data as a whole has been processed in such a way as to move, reorder, delete, insert or format the data.” *See Mitchell*, column 1, lines 59-67. Accordingly, the speech recognition engine of *Mitchell* allows dictated audio to be played back. As a result, *Mitchell* does not teach or suggest converting textual words to audible words. For at least this reason, Claim 1, as amended, is allowable as are all the claims depending therefrom. In addition, Claims 7, 10, 15, 18, 22, 26, 30, 32, 35, and 37 are

each allowable for analogous reasons, as are the claims depending therefrom. Favorable action is requested.

Claim 10

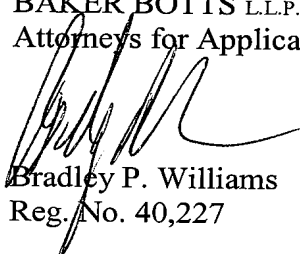
Claim 10, as amended, is allowable also at least because *Mitchell* does not teach or suggest “converting the plurality of textual words to a plurality of audible words, **each audible word comprising media stream packets**” as recited in amended Claim 10. The Office Action cites Column 6, lines 9-29 of *Mitchell* in rejecting this claim. The Office Action is again incorrect. As described above, *Mitchell* is directed to a speech recognition engine that stores dictated audio. By operating in such a manner, at no point does *Mitchell* teach or suggest using media stream packets, particularly because *Mitchell* does not stream packets, but merely facilitates playback of stored audio. For at least this reason, Claim 10, as amended, is allowable as are all the claims depending therefrom. In addition, Claim 15 is allowable for analogous reasons, as are the claims depending therefrom. Favorable action is requested.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Brad P. Williams, Attorney for Applicants, at the Examiner's convenience at (214) 953-6447.

Applicants believe no fee is due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to Deposit Account No. **02-0384** of **Baker Botts L.L.P.**

Respectfully submitted,
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10/12/06

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